

ST 05-17

Tax Type: Sales Tax

**Issue: Unreported/Underreported Receipts (Non-Fraudulent)
Books And Records Insufficient**

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS**

v.

**ABC ENTERPRISES, INC. d/b/a
COMPUTER PLACE,
Taxpayer**

No. 04-ST-0000

IBT #: 0000-0000

NTL # 00 00000000000000

NTL # 00 00000000000000

NTL # 00 00000000000000

Tax pds. 9/99-6/03

**Charles E. McClellan
Administrative Law Judge**

RECOMMENDATION FOR DECISION

Appearances: George Foster, Special Assistant Attorney General, for the Illinois Department of Revenue (the "Department"); Scott Berends, of Patterson Law Firm for ABC Enterprises, Inc. ("Taxpayer").

Synopsis:

This matter arose from a protest filed to Notices of Tax Liability issued to Taxpayer by the Department for the periods beginning with September 1999 through June 2003. The Department based its Notices of Tax Liability on its determination of under-reported taxable sales and tax due on items purchased during the audit periods using its judgment and the best information available. An evidentiary hearing was held on June 29, 2005.

I recommend that the Notices of Tax Liability be made final.

Findings of Fact:

1. The Department issued the Notices of Tax Liability identified above to Taxpayer on December 10 and 23, 2003. Dept. Ex. No. 1.
2. Taxpayer, a Corporation, is in the business of selling computer equipment and software at a location in Anywhere, Illinois. *Id.*
3. The Department's audit of Taxpayer's business covered the period of September 1999 through June 2003. *Id.*

Conclusions of Law:

The admission into evidence of the records of the Department under the certification of the Director at a hearing before the Department or any legal proceeding establishes the Department's *prima facie* case. 35 ILCS 120/4¹, 120/8; *Copilevitz v. Department of Revenue*, 41 Ill. 2d 154, 242 N.E.2d 205 (1968); *Central Furniture Mart v. Johnson*, 157 Ill. App. 3d 907, 510 N.E.2d 937 (1st Dist. 1987).

In this case, when the Department's Notices of Tax Liability (Dept. Ex. No. 1) were entered into the record under the certificate of the Director its *prima facie* case was established, and the burden shifted to the taxpayer to overcome the Department's *prima facie* case. *Anderson v. Dept. of Finance*, 370 Ill. 225, 18 N.E.2d 206 (1938); *Masini v. Dept. of Revenue*, 60 Ill. App. 3d at 14, 376 N.E.2d 325. 35 ILCS 120/4

In order to overcome the presumption of validity attached to the Department's *prima facie* case, Taxpayer is required to introduce into the record competent evidence, identified with its books and records showing that the Department's records are incorrect.

¹ Unless otherwise noted, all statutory references are to the Retailers' Occupation Tax Act (ROTA), 35 ILCS 120/1 *et seq.*, sometimes referred to as *sales tax*, or the Illinois Use Tax Act (UTA) 35 ILCS 105/1, *et seq.*, sometimes referred to as *use tax*.

Masini v. Dept. of Revenue, 60 Ill. App. 3d at 15, 376 N.E.2d 324 (1st Dist.1978); *Copilevitz v. Dept. of Revenue*, 41 Ill. 2d 154, 242 N.E.2d 205 (1968); *Dupage Liquor Store, Inc. v. McKibbin* 383 Ill. 276, 48 N.E.2d 926 (1943); *Howard Worthington, Inc. v. Department of Revenue*, 96 Ill. App. 3d 1132, 421 N.E.2d 1030 (2nd Dist. 1981). A taxpayer's testimony alone will not overcome the Department's *prima facie* case. *Central Furniture Mart v. Johnson, supra*. To overcome the Department's *prima facie* case the taxpayer must present consistent and probable evidence identified with its books and records. *Id.*

Taxpayer did not produce present and probable evidence identified with its books and records to refute the Department's *prima facie* case. The only document Taxpayer offered that was admitted into evidence was its Exhibit No. 1. That document is 52 pages long. The first 6 pages consist of the Auditor's Narrative, prepared by the Department's auditor. That document sets forth a brief description of Taxpayer's business and describes the various procedures and documents that he used to conduct the audit. The following 33 pages consist of the Auditor's workpapers. The last 13 pages consist of a copy of Taxpayer's federal income tax return for tax year ended September 30, 2000. Taxpayer's Exhibit No. 1 did not refute the Department's *prima facie* case. If anything, it tended to support it.

In response to the request of Department's auditor for Taxpayer's books and records for the audit periods, Taxpayer provided a 1999 federal income tax return for the taxable year ended September 30, 2000, 16 sales tax returns, daily sales book entries and monthly sales summary reports for September 1999 through May of 2001. Of the 16 sales tax returns, only four had been filed. Tr. p. 11. Taxpayer provided no additional records

to the Department in response to its request. Tr. pp. 111-113. Taxpayer failed to provide the Department with records regarding sales for resale, exempt sales or sales in interstate commerce as requested by the Department. Tr. pp. 23, 107-111, 117-118. Because Taxpayer had no other books and records, the Department projected sales for the audit periods using the sales tax returns provided by Taxpayer. Tr. pp. 12-14, Dept. Ex. No. 1.

The auditor assessed use tax on items purchased during the audit periods on the basis of amounts reported on Taxpayer's federal income tax return for 1999. The Department used this method because Taxpayer produced no invoices or other documents showing that the tax had been paid on these items at the time of purchase. Tr. pp. 40, 115, 119-121.

The law is clear that if the Department has reason to believe that the amount of taxable sales reported by a taxpayer is incorrect, it can determine the amount of sales that should have been reported by using its best judgment and information. *Anderson v. Department of Finance*, 370 Ill. 225, 18 N.E.2d 206 (1938). That is what the Department did in this case. It determined Taxpayer's liability based on the documents provided by Taxpayer using its best judgment and information available. That is all the law requires.

Taxpayer has failed to overcome the Department's *prima facie* case. Therefore, I recommend that the Notices of Tax Liability be made final.

Date: 8/31/2005

Charles E. McClellan
Administrative Law Judge